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In the

Supreme Court of the United States

JOSEPH SCHEIDLER, ANDREW SCHOLBERG, TIMOTHY MURRAY, AND THE PRO-LIFE ACTION NETWORK, INC.,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., et al.,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF OF *AMICI CURIAE* FORMER FEDERAL PROSECUTORS AND WOMEN IN FEDERAL LAW ENFORCEMENT, INC. IN SUPPORT OF RESPONDENTS NATIONAL ORGANIZATION FOR WOMEN, INC., et al.

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INTEREST OF *AMICI CURIAE*[1]

The Hobbs Anti-Racketeering Act (Hobbs Act), 18 U.S.C. § 1951, is a cornerstone of federal criminal prosecution. It prohibits acts ranging from common extortion and robbery to international terrorism. *Amici* are former prosecutors and current members of law enforcement who have relied on the Hobbs Act to deter and punish acts against our nation and its citizens. *Amici* also are fully aware that the Hobbs Act is not the only federal statute that reaches a broad range of extortionate activities. *Amici* thus are also concerned that reversal of the opinion below, as petitioners here urge, would severely limit the federal government's ability to respond to extortion of all kinds under the Hobbs Act and other federal extortion statutes. Accordingly, *Amici* submit that this Court should consider the impact of this case on a broad range of federal criminal activity and construe the Hobbs Act, as respondents urge, to encompass crimes that cause the victim to surrender property.

Scott R. Lassar, former United States Attorney for the Northern District of Illinois; Anton R. Valukas, former United States Attorney for the Northern District of Illinois; Dan K. Webb, former United States Attorney for the Northern District of Illinois; Mark F. Pomerantz, former Assistant United States Attorney and Chief of the Criminal Division of the United States Attorney's Office for the Southern District of New York; Ronald S. Safer, former Assistant United States Attorney and Chief of the Criminal Division of the United

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[1] All parties in this matter have consented to the filing of this *Amici Curiae* brief, as evidenced by letters of consent filed with the Clerk. *Amici* are not related in any way to any party in this case, and no party or its counsel has authored any part of this brief. No person or entity other than *Amici* and their counsel has made any monetary contribution to the preparation of this brief.

States Attorney's Office for the Northern District of Illinois; Steven A. Miller, former Assistant United States Attorney and Chief of the Special Prosecutions Section and the Banking and Financial Institutions Fraud Unit of the United States Attorney's Office for the Northern District of Illinois; David C. Bohan, former Assistant United States Attorney for the Northern District of Illinois; Mark S. Hersh, former Assistant United States Attorney for the Northern District of Illinois; and Scott F. Turow, former Assistant United States Attorney for the Northern District of Illinois, are former federal prosecutors who have relied on the Hobbs Act and other federal extortion statues to combat acts of extortion and terrorism of all kinds. *Amici* have prosecuted acts of extortion in the federal courts.

Women in Federal Law Enforcement, Inc. (WIFLE), established in June 1999 as an outgrowth of an interagency committee formed in 1982 by the U.S. Departments of Treasury and Justice, is an organization of women and men who endeavor to achieve gender equity throughout the law enforcement profession, resulting in better service to the public. The majority of WIFLE's members are women currently employed by federal law enforcement agencies, including by the Federal Bureau of Investigation (FBI), the federal agency with primary investigative jurisdiction over criminal violations of the Hobbs Act.

Amici fully support Respondents' arguments for affirmance in this case.[2]

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[2] *Amici* urge affirmance on both questions as to which the Court granted certiorari. In this brief, however, we address only the second question.

STATUTORY PROVISIONS INVOLVED

The text of the Hobbs Act, 18 U.S.C. § 1951, and other federal extortion statutes discussed in this brief, *see infra* pp. 18-23, are set forth in an appendix to this brief. App., *infra*.

STATEMENT

Amici adopt Respondents' Statement and note the following facts relevant to the legal discussion in this brief.

This case was brought on behalf of full-service health clinics and their patients whose interstate business operations repeatedly have been disrupted by petitioners' nationwide campaign of violence and terror. The evidence presented below demonstrated beyond doubt that the petitioners engaged in a pattern of crimes that were designed to deprive health centers and their patients of their property rights in violation of the Hobbs Act. Respondents have suffered substantial economic injury as a result of petitioners' unlawful conduct, which unquestionably has affected their ability to provide medical care to their patients throughout the country. In addition, by finding petitioners liable under the Hobbs Act, the jury found, *inter alia*, that petitioners' conduct affected interstate commerce and was not protected speech under the First Amendment. These findings are not the subject of this appeal.

The jury properly found under the trial court's instructions that petitioners' conduct constituted extortion because it resulted in the loss of respondents' property at petitioners' behest. The evidence below demonstrated that the unlawful activities of the petitioners included the use of force to make clinics close their doors and patients give up their appointments: petitioners closed clinics forcibly with cement blocks, pipes, fence posts and Kryptonite locks.

Using metal pipes and metal boxes, petitioners attached themselves to the clinic structure so they could be removed only with special metal-cutting tools. Clinics that did not surrender to petitioners' unlawful threats incurred costs for repairs and for security to protect their patients and staff. Patients bore the burden of added hotel and transportation expenses as well as emergency medical care. And, it was not just patients seeking abortions who were forcibly induced to abandon their appointments with the medical centers. The clinics offered a broad range of services, including gynecological treatment and adoption services, and petitioners targeted every woman with an appointment at the clinics, including those seeking cancer screening or treatment, fertility treatment, annual physicals, and contraceptive products and counseling. All of these deprivations of property were the proper basis for the jury's verdict and the trial court's injunction in this case.

Further, the evidence below established far more than mere "interference" with the rights of clinics and patients. The jury was instructed that each predicate act had to be based on the *wrongful* use of force, violence or fear, and that constitutionally protected and other lawful conduct was excluded. Because the Hobbs Act requires the obtaining of property with the victim's consent induced by wrongful acts, respondents below relied only on conduct that was designed to make respondents give up their right to do business with each other, not on crimes where there was no demand to surrender property.

After the jury rendered its unanimous verdict, the trial court heard additional evidence on whether an injunction was necessary. After hearing all of the evidence, the trial court found that petitioners' pattern of crimes had continued unabated and thus concluded that an injunction was necessary. The Seventh Circuit affirmed the jury verdict and injunction by the trial court, ruling that the Hobbs Act fully

reached petitioners' unlawful conduct. This Court should affirm.

SUMMARY OF ARGUMENT

The Hobbs Act, 18 U.S.C. § 1951, is one of several federal extortion statutes that share a common definition of extortion. That definition is routinely held to encompass crimes such as those committed by petitioners here: crimes in which the extortionist induces the victim to surrender or destroy property of value to the victim. These crimes can include extortionate demands that foreign embassy staff destroy documents, or extortionate demands that individuals cease practicing their religion or else suffer financial harm. If the Court reverses the decision below, its holding will necessarily remove these and all other similar crimes from the ambit of the federal extortion statutes. That result is not required by the plain text of these statutes, their legislative history, public policy, or common sense. Congress's plain intent is for extortion statutes to reach broadly to deter and punish a wide range of crimes such as those found by the jury below, where the victim indisputably surrenders property at the extortionist's behest and suffers financial injury as a result.

This Court should not read the "obtaining" and "property" elements of the Hobbs Act as implying additional jurisdictional requirements. None of the federal extortion statutes -- including the Hobbs Act -- impermissibly intrudes into areas reserved to the States. None asks the States to engage in any conduct or prohibits them from engaging in any conduct. Moreover, each is tied to an express constitutional grant of Congressional power. In the case of the Hobbs Act, a jury must find -- as did the jury below -- a nexus with interstate commerce before returning a conviction (or a finding of civil liability). Thus, the civil liability verdict

below was properly predicated on Hobbs Act extortion and consequent RICO liability.

ARGUMENT

This case is not about abortion and is about much more than the Hobbs Act. Indeed, at its core, this case threatens the enforcement of a broad range of federal extortion statutes. The meaning of the term "extortion" in each of these statutes is construed in parallel with the meaning of that term in the Hobbs Act. If petitioners prevail in this case, enforcement of these other federal extortion statutes will be greatly undermined. *Amici* respectfully submit that there is no need for this Court to reach an outcome that would curtail enforcement of the various federal extortion statutes. The statutory language and the common law of extortion ascribe broad definitions to the terms "property" and "obtain[ing]" in the Hobbs Act, which definitions fully support the decision below.

In *United States* v. *Marcano-Garcia*, 622 F.2d 12 (1st Cir. 1980), for example, Puerto Rican separatists kidnapped the Chilean Consul in San Juan, demanding that, among other things, the Fourth of July Celebration in Puerto Rico be cancelled. Although the First Circuit held such unlawful conduct to be extortion in violation of 18 U.S.C. § 878, that ruling would not survive reversal in this case under petitioners' legal theory. Similarly, if petitioners' arguments were accepted, this Court's decision regarding the Hobbs Act would determine whether (for example) threatening a government official into changing his vote on a key issue constitutes extortion under 18 U.S.C. § 876. None of these outcomes, or others discussed below, is warranted by existing law. Accordingly, this Court should affirm the Seventh Circuit's decision.

I.

EXTORTION UNDER THE HOBBS ACT PROHIBITS CONDUCT THAT CAUSES THE SURRENDER OF PROPERTY

The Hobbs Act prohibits extortionate interference with interstate commerce, and it defines "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). Contrary to petitioners' suggestion, "property" is not limited to tangible objects, money, and securities. And Hobbs Act extortion contains no asportation requirement, as petitioners further misguidedly urge. Instead, the Hobbs Act -- as it has been properly construed for decades -- broadly prohibits -- as it should -- threats intended to cause the destruction or surrender of property of the victim.

A. The "Property" That Is the Subject of Extortion Need Not Be Tangible

This Court has long recognized that "[p]roperty is more than the mere thing which a person owns." It "consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land." *Buchanan* v. *Warley*, 245 U.S. 60, 74 (1917) (citing 1 W. Blackstone, *Commentaries* *127). Property subsumes the "[p]ower over [the] use" of tangible things. *Marsh* v. *Nichols, Shepard & Co.*, 128 U.S. 605, 612 (1888); *accord United States* v. *Craft*, 122 S. Ct. 1414, 1423 (2002); *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982); *Crans* v. *Commissioner*, 331 U.S. 1, 6 (1947); *United States* v. *General Motors Corp.*, 323 U.S. 373, 378 (1945); *Dobbins* v. *City of Los Angeles*, 195 U.S. 223, 236 (1904).

In this case, the United States as *amicus curiae* correctly states that "[i]t was settled when Congress passed the Hobbs Act in 1946 that the term 'property' includes the exclusive right to control the use of business assets, such as buildings and equipment, in any legitimate manner." (SG Br. at 15-16.) Further, as the United States also asserts, "[p]roperty under the Hobbs Act includes not only the tangible and intangible assets of a business but also the *control* over those assets." (*Id.* at 15.)

Indeed, early New York cases, on which the Hobbs Act is based, *see Evans* v. *United States*, 504 U.S. 255, 261 n.9, 264-65 (1992); *United States* v. *Enmons*, 410 U.S. 396, 406 n.16 (1973), also recognized that intangible property can be extorted. *See, e.g.*, *People* v. *Barondess*, 31 N.E. 240, 241 (N.Y. 1892) (work stoppage effects an injury to a business that constitutes an injury to "property."); *accord People* v. *Hughes*, 32 N.E. 1105, 1108 (N.Y. 1893); *People* v. *Weinseimer*, 102 N.Y.S. 579, 587 (App. Div.), *aff'd*, 83 N.E. 1129 (N.Y. 1907).

The Circuit Courts of Appeal also agree that extortion includes threats to obtain intangible property. For example, the Second Circuit held over thirty years ago that "the concept of property under the Hobbs Act, as devolved from its legislative history and numerous decisions, is not limited to physical or tangible property or things, but includes, in a broad sense, any valuable right considered as a source or element of wealth . . . ." *United States* v. *Tropiano*, 418 F.2d 1069, 1075 (2d Cir. 1969) (citations omitted). That court has recently reaffirmed this proposition and explained that "[t]he concept of 'property' under the Hobbs Act is an expansive one. While often the property involved is an existing physical asset, the concept is not limited to tangible things, but includes intangible assets such as rights to solicit customers and to conduct a lawful business." *United States* v. *Arena*, 180 F.3d 380, 392 (2d Cir. 1999) (citations omitted). In

Arena, "the property at issue . . . was the intangible right to conduct business free from threats of violence and physical harm." *Id.* at 394. The Third Circuit agrees. *United States* v. *Local 560 of the Int'l Bhd. of Teamsters*, 780 F.2d 267, 281 (3d Cir. 1985) ("[T]he language of the Hobbs Act makes no . . . distinction between tangible and intangible property."). So, too, does the Fourth Circuit, which has held that "[e]xtortion under the Hobbs Act . . . includes intangible as well as tangible property." *United States* v. *Santoni*, 585 F.2d 667, 673 (4th Cir. 1978) (citation omitted). Specifically, it includes the right "to make a business decision free from outside pressure wrongfully imposed." *Id.* The Fifth Circuit has also held that "business accounts and . . . unrealized profits from those accounts" are "intangible property" protected by the Hobbs Act. *United States* v. *Nadaline*, 471 F.2d 340, 344 (5th Cir. 1973). And the Ninth Circuit agrees that "[t]he right to make business decisions and to solicit business free from wrongful coercion is a protected property right," the deprivation of which can be a Hobbs Act violation. *United States* v. *Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980); *accord United States* v. *Hoelker*, 765 F.2d 1422, 1425 (9th Cir. 1985).

This settled legal principle should be applied fully in this case.

B. The Perpetrator Need Not Personally Receive The Property

This Court should also reject petitioners' argument that the word "obtain" in the Hobbs Act exclusively means that the defendant himself must "get" or "acquire" the victim's property. By its plain interpretation, the word "obtain" also includes the defendant's "obtaining" control over the victim's property which control causes the victim to discard or surrender that property. Indeed, the overwhelming majority of courts have held that the Hobbs Act properly

encompasses threats or use of force intended to cause the victim to surrender his own property.[3]

The First, Second, and Seventh Circuit Courts of Appeal correctly have so held. As the Second Circuit has explained, "[s]ince the Hobbs Act concept of property is broad, '[t]he Act's requirement that property be "obtain[ed]" is given a similarly broad construction.'" *United States* v. *Arena*, 180 F.3d 380, 394 (2d Cir. 1999) (alterations in original) (quoting *Town of West Hartford* v. *Operation Rescue*, 915 F.2d 92, 101 (2d Cir. 1990)). Under this proper construction, "[a] perpetrator plainly may 'obtain[]' property without receiving anything, for obtaining includes 'attain[ing] . . . disposal of.'" *Id.* (alterations in original) (quoting *Webster's Third New International Dictionary* 1559 (1976)). The extortionist thus obtains property even without taking possession of it, when he uses violence or threats of violence to force his victim to abandon it. *Id.* The *Arena* case, like this case, involved threatening conduct designed to prevent doctors from practicing their profession. The Second Circuit held that "where the property in question is the victim's right to conduct a business free from threats of violence and physical harm, a person who has committed or threatened violence or physical harm in order to induce abandonment of that right has obtained, or attempted to obtain, property within the meaning of the Hobbs Act." *Id.*

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[3] The United States as *amicus curiae* asserts that "where the property at issue is a business's *intangible* right to exercise exclusive control over the use of its assets, the defendant obtains that property by obtaining control over the use of those assets." (SG Br. at 22.) While this argument reaches the correct outcome on the facts of this case, we submit that it is, like the petitioners' argument, too cramped a reading of the word "obtain." As we explain in the text, the defendant obtains the victim's intangible right to operate his business when by threat or force he causes the victim to relinquish that right.

Similarly, in *United States* v. *Anderson*, 716 F.2d 446 (7th Cir. 1983), the Seventh Circuit affirmed the Hobbs Act conviction of a defendant who, at gunpoint, threatened to kill a doctor unless that doctor ceased performing abortions. *Id.* at 447-50. That court later aptly stated that a defendant "would have violated [the Hobbs Act] if, for example, he had simply demanded that Johnson & Johnson burn $1 million in cash." *United States* v. *Lewis*, 797 F.2d 358, 364 (7th Cir. 1986). These principles clearly are correct.

The First Circuit, too, has held that using threats or force to prevent others from operating their business constitutes extortion. In *Libertad* v. *Welch*, 53 F.3d 428 (1st Cir. 1995), that court declared that it "is difficult to conceive a set of facts that more clearly sets forth extortion as it is defined by § 1951(b)(2)" than the use of "force (physical obstruction, trespass, vandalism, resisting arrest), intimidation, and harassment of clinic personnel and patients, with the specific, uniform purpose of preventing the clinic from conducting their normal, lawful activities" and resulting in "the clinics' loss of business." *Id.* at 438 n.6. *But see United States* v. *Panaro*, 266 F.3d 939, 943 (9th Cir. 2001) ("under the Hobbs Act, extortion, which is a larceny-type offense, does not occur when a victim is merely forced to part with property").

The cases that hold that a person violates the Hobbs Act when he threatens or forces another into surrendering control of property embody a notion that has been part of extortion jurisprudence for decades: "the gravamen of the offense is loss to the victim." *United States* v. *Hyde*, 448 F.2d 815, 843 (5th Cir. 1971); *accord United States* v. *Hairston*, 46 F.3d 361, 365 (4th Cir. 1995); *United States* v. *Carlock*, 806 F.2d 535, 555 (5th Cir. 1986); *United States* v. *Santoni*, 585 F.2d 667, 673 (4th Cir. 1978); *United States* v. *Frazier*, 560 F.2d 884, 887 (8th Cir. 1977). This logical principle compels affirmance here.

Petitioners nonetheless argue that despite this longstanding principle, the Hobbs Act -- specifically, the word "obtain" -- requires a physical taking of property by the defendant in all cases. But even the authorities on which petitioners rely make plain that the "obtain" requirement is not to be read so limitedly. Indeed, this Court held almost fifty years ago that "extortion as defined in [the Hobbs Act] in no way depends upon having a direct benefit conferred on the person who obtains the property." *United States* v. *Green*, 350 U.S. 415, 420 (1956). And, as noted above, following this Court's lead, the federal circuit courts have uniformly held that "[t]he concept of property under the Hobbs Act . . . does not depend upon a direct benefit being conferred on the person who obtains the property." *United States* v. *Tropiano*, 418 F.2d 1069, 1075 (2d Cir. 1969) (citations omitted); *accord United States* v. *Trotta*, 525 F.2d 1096, 1098 n.2 (2d Cir. 1975); *United States* v. *Clemente*, 640 F.2d 1069, 1079-80 (2d Cir. 1981). Rather, "the offense is committed even though the person doing the extortion does not get the money." *United States* v. *Sweeney*, 262 F.2d 272, 275 (3d Cir. 1959); *accord United States* v. *Cerilli*, 603 F.2d 415, 420 (3d Cir. 1979). Thus, the Eighth Circuit in *Frazier*, for example, expressly rejected the defendant's argument that the "term 'obtaining of property,' as used in the Hobbs Act, means 'reducing to actual physical possession.'" 560 F.2d at 887; *see also United States* v. *Haimowitz*, 725 F.2d 1561, 1577 (11th Cir. 1984) ("[A] Hobbs Act prosecution is not defeated simply because the extorter transmitted the extorted monies to a third party.").

In sum, the great weight of authority holds that in extortion cases, the perpetrator need not take physical possession of the victim's property or cause the victim to deliver the property to a third party. That is the proper statement of the law. Under the Hobbs Act -- and, as we show below, under all of the federal extortion statutes -- the crime of extortion is completed if the defendant, by threats or

violence, causes the victim to surrender or destroy his own property. Accordingly, the judgment below should be affirmed.[4]

II.

THE HOBBS ACT'S DEFINITION OF EXTORTION IS SHARED BY ALL THE FEDERAL EXTORTION STATUTES

The Hobbs Act is only one of many federal extortion statutes. Through these provisions, Congress has prohibited extortion that implicates, *inter alia*, other nations, interstate travel, interstate commerce, the safety of foreign dignitaries, and the mail and postal services. These federal extortion

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[4] Petitioners' federalism argument -- *i.e.*, that "[t]he Seventh Circuit's definition [of 'extortion' under the Hobbs Act] should also be rejected because of its potential to federalize all manner of traditional state offenses" -- is wholly without merit. (Scheidler Br. at 33; *see* OR Br. at 47-48.) In *United States* v. *Culbert*, 435 U.S. 371 (1978), this Court explicitly rejected any such federalism argument: "With regard to the concern about disturbing the federal-state balance, . . . there is no question that Congress intended to define as a federal crime conduct it knew was punishable under state law." *Id* at 379; *see Stirone* v. *United States*, 361 U.S. 212, 215 (1960) (holding that the Hobbs Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence"); *see also Jones* v. *United States*, 529 U.S. 848, 854 (2000) (explaining that when Congress uses the statutory term "affecting commerce" without qualification, as it does in the Hobbs Act, it "inten[ds] to invoke its full authority under the Commerce Clause"); *United States* v. *Gray*, 260 F.3d 1267, 1275 (11th Cir. 2001) (noting that "the Hobbs Act has no qualifying language indicating that Congress intended to limit the Act's jurisdictional reach," but "[i]nstead, the language of the Hobbs Act indicates Congress's intent to invoke its full authority under the Commerce Clause"), *cert. denied*, 122 S. Ct. 2672 (2002); *United States* v. *Malone*, 222 F.3d 1286, 1295 (10th Cir.) (same), *cert. denied*, 531 U.S. 1028 (2000).

statutes,[5] the Hobbs Act included, share a common definition of "extortion." All of these statutes incorporate the common-law definition of extortion, expanded to encompass threats by private actors. Thus, the Court's holding in this case cannot be limited to the Hobbs Act. Indeed, the Court's interpretation of 18 U.S.C. § 1951(a)(2) will necessarily affect a multitude of statutory provisions in which Congress has prohibited clear federal criminal conduct. *Amici* therefore urge that the Court reject petitioners' cramped reading of the Hobbs Act in this case.

A. The Hobbs Act's Definition of Extortion Merely Codifies the Common Law

Under the Hobbs Act, "'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). Congress did not include this definition of extortion in the Hobbs Act in order to differentiate "Hobbs Act extortion" from other federal extortion crimes. Indeed, the opposite is true: Congress included the definition of extortion in the Hobbs Act precisely to ensure that it was construed in accordance with the common law.

The history of the Hobbs Act makes this clear. The Hobbs Act was preceded by the Anti-Racketeering Act of 1934, which provided penalties for any person who "[o]btains property of another, with his consent, induced by wrongful use of force or fear, or under color of official right." 18 U.S.C. § 420a(b) (1934). It also provided penalties for any person who "[c]ommits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to" obtain property in

[5] The federal extortion statutes are listed below in Section II.B.

violation of Section 420a(b). 18 U.S.C. § 420a(c) (1934). Importantly, the Anti-Racketeering Act "required that the proscribed 'force, violence or coercion' lead to exaction of 'valuable consideration'" and excluded wage payments from the definition of "consideration." *United States* v. *Culbert*, 435 U.S. 371, 376 (1978); *Evans* v. *United States*, 504 U.S. 255, 261 n.9 (1992); *Enmons* v. *United States*, 410 U.S. 396, 401 n.6 (1973).

In *United States* v. *Local 807 of International Brotherhood of Teamsters*, 315 U.S. 521 (1942), this Court held that because of its wage-payments exclusion, the Anti-Racketeering Act did not prohibit the actions of union truck drivers who had exacted money by threats or violence from out-of-town drivers in return for "undesired and often unutilized services." *Culbert*, 435 U.S. at 377 (citing *Teamsters*, 315 U.S. 521). The ruling in *Teamsters* led directly to the passage of the Hobbs Act, which was enacted to bring wage payments and union activity squarely within a statute prohibiting the obtaining of property by force or fear. *Id.* Thus, in drafting the Hobbs Act, Congress specifically included the term "extortion," which had not been included in the Anti-Racketeering Act. *Id.*

Although this Court has recognized that "[t]he legislative history" of the Hobbs Act "is sparse and unilluminating with respect to the offense of extortion," *Evans*, 504 U.S at 264, at least two important aspects of the history of the extortion language are quite clear. *First*, it is clear that the inclusion of language prohibiting extortion was not intended as a substantive change to the scope of the Anti-Racketeering Act, but rather as an express codification of what Congress had intended that prior Act to prohibit. As the Second Circuit recently observed, "[a]lthough the structure of the [Anti-Racketeering] Act differs from that of the Hobbs Act, the substance of their prohibitions is the same," *United States* v. *Jackson*, 180 F.3d 55, 68 (2d Cir. 1999), and it is

"quite clear that [in the Anti-Racketeering Act] Congress meant the statutory language to describe what it viewed as the essence of extortion, for the report of the Senate Judiciary Committee discussing the bill that would become the [Anti-Racketeering] Act stated that the bill was aimed at 'persons who commit acts of violence, intimidation and *extortion*.'" *Id.* (quoting S. Rep. No. 73-532, at 1 (1934)) (emphasis added).

Second, it is clear that Congress had no special (and certainly not a limited) meaning of extortion in mind in drafting the Hobbs Act. Congress simply sought to incorporate the common-law definition of extortion that had "accumulated the legal tradition and meaning of centuries of practice." *Morissette* v. *United States*, 342 U.S. 246, 263 (1952). This sentiment was probably best expressed by Representative Hobbs himself during debate on the bill that would become the Hobbs Act. Hobbs stated that the terms extortion and robbery "have been construed a thousand times by the courts. Everybody knows what they mean." 91 Cong. Rec. 11,912 (1945); *see also Evans*, 504 U.S. at 279 (Thomas, J., dissenting) ("Extortion is one of the oldest crimes in Anglo-American jurisprudence.").

Indeed, this Court has recognized that those portions of the Hobbs Act dealing with extortion by a public official -- including the terms "obtain" and "property" -- simply codify the common law:

> Although the present statutory text is much broader than the common-law definition of extortion because it encompasses conduct by a private individual as well as conduct by a public official, the portion of the statute that refers to official misconduct continues to mirror the common-law definition. There is nothing in either the statutory text or the

> legislative history that could fairly be described as a 'contrary direction,' *Morissette* v. *United States*, 342 U.S., at 263, 72 S. Ct., at 249- 250, from Congress to narrow the scope of the offense.

Evans, 504 U.S. at 263-64 (1992) (footnotes omitted).

Thus, while extortion is no longer confined to acts taken by government officials under color of law, *see, e.g.*, statutes cited *infra* pp. 18-19; *see also Evans*, 504 U.S. at 260-61 (1992), the Hobbs Act has otherwise fully preserved the common-law definition of an extortionate act. *See id.* at 259. Specifically; "extortion" comprises, as was the case here, a threat or violence intended to force another to relinquish property. *See, e.g.*, cases cited *supra* pp. 8-12. This broad common-law definition of extortion was intended by Congress to be encompassed by the Hobbs Act, as the plain language and legislative history demonstrate, and this Court should so hold and affirm the decision below.

B. Petitioners' Position Would Decriminalize Clear Federal Criminal Conduct

In *NOW I*, this Court held that the RICO statute does not require an economic motive. *Nat'l Org. for Women, Inc.* v. *Scheidler*, 510 U.S. 249, 262 (1994). Without directly saying so, petitioners now effectively ask this Court to revisit that ruling and hold that the Hobbs Act does require an economic motive. They argue that the extortion provisions of the Hobbs Act should be read limitedly to require asportation of property, either by a physical taking or through conversion. A criminal who simply causes the victim to surrender control of property by threat of violence cannot commit extortion, petitioners urge.

That is not the law. No asportation requirement existed at common law, and Congress has never imposed such a limitation by statute. With the lone exception of *dicta* in a Ninth Circuit opinion, no federal court has ever so held. *See United States* v. *Arena*, 180 F.3d 380, 394 (2d Cir. 1999); *Libertad* v. *Welch*, 53 F.3d 428, 438 n.6 (1st Cir. 1995); *United States* v. *Lewis*, 797 F.2d 358, 364 (7th Cir. 1986); *United States* v. *Anderson*, 716 F.2d 446, 447-50 (7th Cir. 1983); *but see United States* v. *Panaro*, 266 F.3d 939, 943, 948 (9th Cir. 2001). This Court should not create such an extra-textual statutory requirement in this case. As respondents argue, the text of the Hobbs Act encompasses the crimes committed by petitioners in this case. And, the history of the Hobbs Act and the breadth of the many other federal extortion statutes make this even clearer.

Besides the Hobbs Act, at least eight sections of Title 18 criminalize acts of extortion. They are:

- Section 872 prohibits extortionate acts by officers or employees of the United States. 18 U.S.C. § 872.

- Section 875 prohibits extortionate communications in interstate or foreign commerce. 18 U.S.C. § 875(b), (d).

- Section 876 prohibits extortionate acts involving the United States Postal Service. 18 U.S.C. § 876.

- Section 877 prohibits extortionate communications mailed from a foreign country. 18 U.S.C. § 877.

- Section 878 addresses "extortionate demand[s]" in connection with any of three

other statutes: 18 U.S.C. §§ 112, 1116 & 1201, which, respectively, prohibit physical attacks on, murder of, or kidnapping of foreign officials and other international dignitaries within the United States. 18 U.S.C. § 878(b).

- Section 1030 prohibits extortionate threats to damage computers used by the federal government or by financial institutions regulated and/or insured by the federal government or used in interstate or foreign commerce or communication. 18 U.S.C. § 1030(a)(7), (c)(3), (e)(1)-(2).

- Section 1952, commonly known as the Travel Act, prohibits interstate travel or the use of the mails in order to commit extortion or distribute the proceeds of extortion. 18 U.S.C. § 1952(a), (b)(2).

- Section 2113 prohibits bank robbery, including the extortionate obtaining of any property or money belonging to or controlled by a bank. 18 U.S.C. § 2113(a).

These eight federal extortion statutes do not define the term "extortion," but simply use the term "extortion" without greater definition. As this Court has explained, this silence is to be interpreted as an implied incorporation of the longstanding historical meaning of the team "extortion." Thus,

> where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of

> learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.

Morissette v. *United States*, 342 U.S. 246, 263 (1952). This rule of statutory construction was applied by this Court to the extortion context as recently as 1992. *See Evans* v. *United States*, 504 U.S. 255 (1992). And, more than thirty years ago, this Court announced that it would "decline to give the term 'extortion' an unnaturally narrow reading," and concluded that "extortion" as it appears in the Travel Act is a "generic term." *United States* v. *Nardello*, 393 U.S. 286, 296 (1969); *see also United States* v. *Marcano-Garcia*, 622 F.2d 12 (1st Cir. 1980) ("the term 'extortion' . . . has a well-settled meaning under federal law"). The same principle is no less true today.

While the Hobbs Act is the only federal extortion statute to contain an explicit definition of extortion, the Hobbs Act's definition of extortion simply codifies the same modern definition of extortion that is implied in these other federal extortion statutes -- which definition requires affirmance of the Seventh Circuit's decision in this case. Indeed, the Circuit Courts of Appeal have uniformly made this precise connection. In *United States* v. *Jackson*, 180 F.3d 55 (2d Cir. 1999), for example, the Second Circuit construed the meaning of extortion in 18 U.S.C. § 875 by reference to Representative Hobbs's comments and the *Morrissette* rule of statutory construction. It held that "[g]iven Congress's contemporaneous consideration of the predecessors of § 875(d) and the Hobbs Act, both of which focused on extortion, we infer that Congress's concept of extortion was the same with respect to both statutes." *Id.* at 70. The court stated further: "In enacting the Hobbs Act, Congress made

express what we would ordinarily presume with respect to the meaning of extortion." *Id.* at 69. And, in *United States* v. *Lance*, 536 F.2d 1065 (5th Cir. 1976), the Fifth Circuit held that "[t]he only difference between the Hobbs Act and [18 U.S.C.] § 876 is that § 876 concerns the use of mails, while the Hobbs Act is written in terms of commerce. The other elements of the offenses proscribed by the two statutes are the same." *Id.* at 1068. As the Second Circuit noted, "an overview of the Criminal Code reveals that, in enacting provisions dealing with extortion, Congress has simply been inconsistent as to the inclusion of . . . an extortion definition. The inconsistency in format does not appear to bespeak different legislative intentions as to the meaning of extortion . . . ." *Jackson,* 180 F.3d at 67.

This Court should not now create a safe harbor for extortionists by construing the Hobbs Act -- and, indeed, all other federal extortion statutes -- to require that the perpetrator personally obtain physical property. Such a ruling would have grave implications for federal law enforcement, because it would decriminalize serious criminal conduct that affects national interests, and criminal conduct that Congress has rightly outlawed through the various federal extortion statutes. A ruling in favor of petitioners would, for example:

- Prohibit the use of Section 876 to punish a person who mails a letter threatening to injure a political candidate unless she renounces her candidacy and withdraws from public life;

- Prohibit the use of Section 878 to punish a person who makes similar written or oral threats against a visiting foreign leader;

- Prohibit the use of Section 877 to punish people in foreign countries who mail letters

to residents of the United States threatening to attack their homes unless they cease practicing their religion;

- Prohibit the use of Section 1030 to punish a person who threatens to unleash a computer virus unless a stock exchange de-lists a publicly traded security, under circumstances in which the person making the threat receives no financial benefit from the security being de-listed;

- Prohibit the use of Section 1952 to punish a person who travels across state lines to threaten people with assault unless they stop wearing fur;

- Prohibit the use of Section 1952 to punish a person who mails letters to gun manufacturers threatening to infect their offices with anthrax unless they stop manufacturing guns; and

- Prohibit the use of Section 2113 to punish an anarchist who walks into a bank and demands at gunpoint that the tellers burn all of the money in the bank.

Clearly, none of these results is warranted.

The *Anderson* case from the Seventh Circuit shows that these hypotheticals are not far-fetched. *See United States* v. *Anderson*, 716 F.2d 446, 447-50 (7th Cir. 1983). That all have not yet occurred is due in part to effective enforcement of the federal extortion statutes. But, if petitioners prevail on this appeal, effective enforcement of those statutes will be seriously undermined. If the Hobbs Act does not prohibit the conduct in which the jury below found that petitioners

engaged, then the Hobbs Act will not reach a multitude of clearly criminal activity and none of the federal extortion statutes would reach any of the conduct described above either. Congress did not intend for that to be the law. And this Court should not declare that to be the law.

CONCLUSION

For the reasons stated above, and those in respondents' brief, *Amici* respectfully request that the Court affirm the Seventh Circuit's decision below.

Dated: New York, New York
September 17, 2002

Respectfully submitted,

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APPENDIX

Pursuant to U.S. Supreme Court Rule 24(f), *Amici* provide the text of the relevant portions of the Hobbs Act, 18 U.S.C. § 1951, and the other federal extortion statutes discussed in this brief:

1. The Hobbs Act, 18 U.S.C. § 1951

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section –

* * * * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

* * * * *

2. 18 U.S.C. § 872

§ 872. Extortion by officers or employees of the United States

Whoever, being an officer or employee of the United States or a department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

3. 18 U.S.C. § 875

§ 875. Interstate communications

* * * * *

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.

* * * * *

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the

addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

4. 18 U.S.C. § 876

§ 876. Mailing threatening communications

Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

* * * * *

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

5. 18 U.S.C. § 877

§ 877. Mailing threatening communications from foreign country

Whoever knowingly deposits in any post office or authorized depository for mail matter of any foreign country any communication addressed to any person within the United States, for the purposes of having such communication delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to such addressee in the United States, and as a result thereof such communication is delivered by the post office establishment of such foreign country to the Postal Service and by it delivered to the address to which it is directed in the United States, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

Whoever, with intent to extort from any person any money or other thing of value, so deposits as aforesaid, any communication for the purpose aforesaid, containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

* * * * *

Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits as aforesaid, any communication, for the purpose aforesaid, containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other

person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

6. 18 U.S.C. § 878

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons

* * * * *

(b) Whoever in connection with any violation of subsection (a) [which prohibits "threat[s] to violate section 112, 1116, or 1201"] or actual violation of section 112, 1116, or 1201 makes any extortionate demand shall be fined under this title or imprisoned not more than twenty years, or both.

* * * * *

7. 18 U.S.C. § 1030

§ 1030. Fraud and related activity in connection with computers

(a) Whoever –

* * * * *

(7) with intent to extort from any person, firm, association, educational institution, financial institution, government entity, or other legal entity, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to cause damage to a protected computer;

shall be punished as provided in subsection (c) of this section.

* * * * *

(c) The punishment for an offense under subsection (a) or (b) of this section is –

* * * * *

(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection . . . (a)(7) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection . . . (a)(7) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;

* * * * *

(e) As used in this section –

(1) the term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

(2) the term "protected computer" means a computer –

(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects that use by or for the financial institution or the Government; or

(B) which is used in interstate or foreign commerce or communication;

* * * * *

8. The Travel Act, 18 U.S.C. § 1952

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to –

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform –

> (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or
>
> (B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means . . . (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States . . . .

* * * * *

9. 18 U.S.C. § 2113

§ 2113. Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association;

* * * * *

Shall be fined under this title or imprisoned not more than twenty years, or both.

* * * * *